

AMENDED IN SENATE AUGUST 14, 2013  
AMENDED IN SENATE AUGUST 12, 2013  
AMENDED IN SENATE JUNE 19, 2013  
AMENDED IN ASSEMBLY MAY 8, 2013  
AMENDED IN ASSEMBLY APRIL 18, 2013  
AMENDED IN ASSEMBLY MARCH 21, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1126**

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**Introduced by Assembly Members Gordon and Mullin  
(Principal coauthor: Assembly Member Wilk)**

February 22, 2013

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An act to amend Sections 40121, 40180, 40192, 40194, 40200, 40201, 41700, 41721, *41780.05*, 41781, and 50001 of, and to add Section 40131.2 to, the Public Resources Code, relating to solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1126, as amended, Gordon. Solid waste: biomass conversion: engineered municipal solid waste (EMSW) conversion.

(1) The California Integrated Waste Management Act of 1989 (act), which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste, through source reduction, recycling, and composting activities. Existing law allows the 50% diversion requirement to include, pursuant

to specified conditions, not more than 10% through biomass conversion, which is defined as the controlled combustion of specific materials for use in producing electricity or heat. Existing law defines the term “transformation” and excludes from that definition composting, gasification, and biomass conversion.

This bill would define the terms “EMSW conversion” and “EMSW conversion facility,” and would make conforming changes to existing definitions with regard to those operations and facilities. The bill would additionally exclude EMSW conversion from the definition of transformation, and would provide that a transformation facility that conducts EMSW conversion is an EMSW conversion facility.

(2) The act requires the integrated waste management plan required to be adopted by a county to include a countywide siting element that provides a description of the areas to be used for the development of certain facilities. The act excludes certain solid wastes, for purposes of determining the base rate for the diversion of solid waste, and requires that the amount of solid waste diverted include solid waste diverted from a disposal facility or transformation facility. *Existing law requires the department to determine compliance with the act’s 50% diversion requirement, based on the jurisdiction’s change in its per capita disposal rate and specifies the procedure for determining that rate.*

This bill would require the countywide siting element to include a description of the areas to be used for the development of adequate EMSW conversion, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

This bill would additionally exclude certain used *tires* or waste tires or biomass materials from the solid waste calculation used in that base rate determination *and the per capita disposal determination* and would require the amount of solid waste to include solid waste diverted from an EMSW conversion facility.

(3) Existing law prohibits a person from establishing or expanding a solid waste facility in a county, after a countywide or regional agency integrated waste management plan has been approved, unless the solid waste facility is, among other things, a disposal facility or a transformation facility that meets certain criteria.

This bill would additionally include, as one of those facilities, an EMSW conversion facility.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 40121 of the Public Resources Code is  
2 amended to read:

3 40121. "Disposal facility" or "facility" means a facility or  
4 location where disposal of solid waste occurs or an EMSW  
5 conversion facility.

6 SEC. 2. Section 40131.2 is added to the Public Resources Code,  
7 to read:

8 40131.2. (a) "Engineered municipal solid waste conversion"  
9 or "EMSW conversion" means the conversion of solid waste  
10 through a process that meets all of the following requirements:

11 (1) The waste to be converted is beneficial and effective in that  
12 it replaces or supplements the use of fossil fuels.

13 (2) The waste to be converted, the resulting ash, and any other  
14 products of conversion do not meet the criteria or guidelines for  
15 the identification of a hazardous waste adopted by the Department  
16 of Toxic Substances Control pursuant to Section 25141 of the  
17 Health and Safety Code.

18 (3) The conversion is efficient and maximizes the net calorific  
19 value and burn rate of the waste.

20 (4) The waste to be converted contains less than 25 percent  
21 moisture and less than 25 percent noncombustible waste.

22 (5) The waste received at the facility for conversion is handled  
23 in compliance with the requirements for the handling of solid waste  
24 imposed pursuant to this division, and no more than a seven-day  
25 supply of that waste, based on the throughput capacity of the  
26 operation or facility, is stored at the facility at any one time.

27 (6) No more than 500 tons per day of waste is converted at the  
28 facility where the operation takes place.

29 (7) The waste has an energy content equal to, or greater than,  
30 5,000 BTU per pound.

31 (8) The waste to be converted is mechanically processed at a  
32 transfer or processing station to reduce the fraction of chlorinated

1 plastics and materials that do not maximize the net-calorie calorific  
2 value and burn rate of the waste.

3 (b) “Engineered municipal solid waste conversion facility” or  
4 “EMSW facility” means a facility where municipal solid waste  
5 conversion that meets the requirements of subdivision (a) takes  
6 place.

7 (c) Notwithstanding Section 40201, a transformation facility  
8 where solid waste conversion takes place that meets the  
9 requirements of subdivision (a) shall be considered an EMSW  
10 facility for purposes of this division and Division 31 (commencing  
11 with Section 50000).

12 SEC. 3. Section 40180 of the Public Resources Code is  
13 amended to read:

14 40180. “Recycle” or “recycling” means the process of  
15 collecting, sorting, cleansing, treating, and reconstituting materials  
16 that would otherwise become solid waste, and returning them to  
17 the economic mainstream in the form of raw material for new,  
18 reused, or reconstituted products which meet the quality standards  
19 necessary to be used in the marketplace. “Recycling” does not  
20 include transformation, as defined in Section 40201 or EMSW  
21 conversion.

22 SEC. 4. Section 40192 of the Public Resources Code is  
23 amended to read:

24 40192. (a) Except as provided in subdivisions (b) and (c),  
25 “solid waste disposal,” “disposal,” or “dispose” means the final  
26 deposition of solid wastes onto land, into the atmosphere, or into  
27 the waters of the state.

28 (b) For purposes of Part 2 (commencing with Section 40900),  
29 “solid waste disposal,” “dispose,” or “disposal” means the  
30 management of solid waste through landfill disposal,  
31 transformation, or EMSW conversion, at a permitted solid waste  
32 facility, unless the term is expressly defined otherwise.

33 (c) For purposes of Chapter 16 (commencing with Section  
34 42800) and Chapter 19 (commencing with Section 42950) of Part  
35 3, Part 4 (commencing with Section 43000), Part 5 (commencing  
36 with Section 45000), Part 6 (commencing with Section 45030),  
37 and Chapter 2 (commencing with Section 47901) of Part 7, “solid  
38 waste disposal,” “dispose,” or “disposal” means the final deposition  
39 of solid wastes onto land.

1 SEC. 5. Section 40194 of the Public Resources Code is  
2 amended to read:

3 40194. "Solid waste facility" includes a solid waste transfer  
4 or processing station, a composting facility, a gasification facility,  
5 a transformation facility, an EMSW conversion facility, and a  
6 disposal facility. For purposes of Part 5 (commencing with Section  
7 45000), "solid waste facility" additionally includes a solid waste  
8 operation that may be carried out pursuant to an enforcement  
9 agency notification, as provided in regulations adopted by the  
10 department.

11 SEC. 6. Section 40200 of the Public Resources Code is  
12 amended to read:

13 40200. (a) "Transfer or processing station" or "station"  
14 includes those facilities utilized to receive solid wastes, temporarily  
15 store, separate, convert, or otherwise process the materials in the  
16 solid wastes, or to transfer the solid wastes directly from smaller  
17 to larger vehicles for transport, and those facilities utilized for  
18 transformation.

19 (b) "Transfer or processing station" or "station" does not include  
20 any of the following:

21 (1) A facility, whose principal function is to receive, store,  
22 separate, convert, or otherwise process in accordance with state  
23 minimum standards, manure.

24 (2) A facility, whose principal function is to receive, store,  
25 convert, or otherwise process wastes that have already been  
26 separated for reuse and are not intended for disposal.

27 (3) The operations premises of a duly licensed solid waste  
28 handling operator who receives, stores, transfers, or otherwise  
29 processes wastes as an activity incidental to the conduct of a refuse  
30 collection and disposal business in accordance with regulations  
31 adopted pursuant to Section 43309.

32 (4) An EMSW conversion facility.

33 SEC. 7. Section 40201 of the Public Resources Code is  
34 amended to read:

35 40201. "Transformation" means incineration, pyrolysis,  
36 distillation, or biological conversion other than composting.  
37 "Transformation" does not include composting, gasification,  
38 EMSW conversion, or biomass conversion.

39 SEC. 8. Section 41700 of the Public Resources Code is  
40 amended to read:

1     41700. Each county shall prepare a countywide siting element  
2     that provides a description of the areas to be used for development  
3     of adequate transformation, EMSW conversion, or disposal  
4     capacity concurrent and consistent with the development and  
5     implementation of the county and city source reduction and  
6     recycling elements adopted pursuant to this part.

7     SEC. 9. Section 41721 of the Public Resources Code is  
8     amended to read:

9     41721. (a) The countywide siting element shall be approved  
10    by the county and by a majority of the cities within the county that  
11    contain a majority of the population of the incorporated area of  
12    the county except in those counties that have only two cities, in  
13    which case the element is subject to approval of the city that  
14    contains the majority of the population of the incorporated area of  
15    the county. Each city shall act upon the countywide siting element  
16    within 90 days after receipt of the siting element. If a city fails to  
17    act upon the siting element within 90 days after receiving the siting  
18    element, the city shall be deemed to have approved the siting  
19    element as submitted.

20    (b) Notwithstanding subdivision (a), a siting element providing  
21    for an EMSW conversion facility is only required to be approved  
22    by the city in which it is located, or if the EMSW is not located in  
23    a city, by the county.

24    SEC. 10. Section 41780.05 of the Public Resources Code is  
25    amended to read:

26    41780.05. (a) After January 1, 2009, pursuant to the review  
27    authorized by Section 41825, the ~~board~~ department shall determine  
28    each jurisdiction's compliance with Section 41780 for the years  
29    commencing with January 1, 2007, by comparing each  
30    jurisdiction's change in its per capita disposal rate in subsequent  
31    years with the equivalent per capita disposal rate that would have  
32    been necessary for the jurisdiction to meet the requirements of  
33    Section 41780 on January 1, 2007, as calculated pursuant to  
34    subdivisions (c) and (d).

35    (b) (1) For purposes of paragraph (5) of subdivision (e) of  
36    Section 41825, in making a determination whether a jurisdiction  
37    has made a good faith effort to implement its source reduction and  
38    recycling element or its household hazardous waste element, the  
39    ~~board~~ department shall consider, but is not limited to the  
40    consideration of, the jurisdiction's per capita disposal rate and

1 whether the jurisdiction adequately implemented its diversion  
2 programs.

3 (2) When determining whether a jurisdiction has made a good  
4 faith effort pursuant to Section 41825 to implement its source  
5 reduction and recycling element or its household hazardous waste  
6 element, the ~~board~~ department shall consider that an increase in  
7 the per capita disposal rate is the result of the amount of the  
8 jurisdiction's disposal increasing faster than the jurisdiction's  
9 growth. The ~~board~~ department shall use this increase in the per  
10 capita disposal rate that is in excess of the equivalent per capita  
11 disposal rate as a factor in determining whether the ~~board~~  
12 department is required, pursuant to Section 41825, to more closely  
13 examine a jurisdiction's program implementation efforts. This  
14 examination may indicate that a jurisdiction is required to expand  
15 existing programs or implement new programs, in accordance with  
16 the procedures specified in Article 4 (commencing with Section  
17 41825) and in Article 5 (commencing with Section 41850).

18 (3) When reviewing the level of program implementation  
19 pursuant to Sections 41825 and 41850, the ~~board~~ department shall  
20 use, as a factor in determining compliance with Section 41780,  
21 the amount determined pursuant to subdivision (d) when comparing  
22 a jurisdiction's per capita disposal rate in subsequent years.

23 (c) (1) (A) Except as otherwise provided in this subdivision,  
24 for purposes of this section, "per capita disposal" or "per capita  
25 disposal rate" means the total annual disposal, in pounds, from a  
26 jurisdiction divided by the total population in a jurisdiction, as  
27 reported by the Department of Finance, divided by 365 days.

28 (B) "*Per capita disposal*" does not include used tires or waste  
29 tires, as defined in Article 1 (commencing with Section 42800) of  
30 Chapter 16 of Part 3.

31 (C) "*Per capita disposal*" does not include biomass material,  
32 as described in subdivision (a) of Section 40106, that is converted  
33 at an EMSW conversion facility.

34 (2) (A) If a jurisdiction is predominated by commercial or  
35 industrial activities and by solid waste generation from those  
36 sources, the ~~board~~ department may alternatively calculate per  
37 capita disposal to reflect those differing conditions.

38 (B) When making a calculation for a jurisdiction subject to this  
39 paragraph, "per capita disposal" or "per capita disposal rate" means  
40 the total annual disposal, in pounds, from a jurisdiction divided

1 by total industry employment in a jurisdiction, as reported by the  
2 Employment Development Department, divided by 365 days.

3 (C) The ~~board~~ *department* shall calculate the per capita disposal  
4 rate for a jurisdiction subject to this paragraph using the level of  
5 industry employment in a jurisdiction instead of the level of  
6 population in a jurisdiction.

7 (3) If the ~~board~~ *department* determines that the method for  
8 calculating the per capita disposal rate for a jurisdiction provided  
9 by paragraph (1) or (2) does not accurately reflect that jurisdiction's  
10 disposal reduction, the ~~board~~ *department* may use an alternative  
11 per capita factor, other than population or industry employment,  
12 to calculate the per capita disposal rate that more accurately reflects  
13 the jurisdiction's efforts to divert solid waste.

14 (d) The ~~board~~ *department* shall calculate the equivalent per  
15 capita disposal rate for each jurisdiction as follows:

16 (1) Except as otherwise provided in this subdivision, the  
17 equivalent per capita disposal rate for a jurisdiction shall be  
18 determined using the method specified in this paragraph.

19 (A) The calculated generation tonnage for each year from 2003  
20 to 2006, inclusive, shall be multiplied by 0.5 to yield the 50 percent  
21 equivalent disposal total for each year.

22 (B) The 50 percent equivalent disposal total for each year shall  
23 be multiplied by 2,000, divided by the population of the jurisdiction  
24 in that year, and then divided by 365 to yield the 50 percent  
25 equivalent per capita disposal for each year.

26 (C) The four 50 percent equivalent per capita disposal amounts  
27 from the years 2003 to 2006, inclusive, shall be averaged to yield  
28 the equivalent per capita disposal rate.

29 (2) If a jurisdiction is predominated by commercial or industrial  
30 activities and by solid waste generation from those sources, the  
31 ~~board~~ *department* may alternatively calculate the equivalent per  
32 capita disposal rate to reflect those conditions by using the level  
33 of industry employment in a jurisdiction instead of the level of  
34 population in that jurisdiction.

35 (3) If the ~~board~~ *department* determines that the method for  
36 calculating the equivalent per capita disposal rate for a jurisdiction  
37 pursuant to this subdivision does not accurately reflect a  
38 jurisdiction's per capita disposal rate that would be equivalent to  
39 the amount required to meet the 50 percent diversion requirements  
40 of Section 41780, the ~~board~~ *department* may use an alternative per



1 capita factor, other than population or industry employment, to  
2 calculate the equivalent per capita disposal rate that more accurately  
3 reflects the jurisdiction's diversion efforts.

4 (4) The ~~board~~ *department* shall modify the percentage used in  
5 paragraph (1) to maintain the diversion requirements approved by  
6 the ~~board~~ *department* for a rural jurisdiction pursuant to Section  
7 41787 or for a reduction granted pursuant to Section 41786.

8 (5) The ~~board~~ *department* may modify the years included in  
9 making a calculation pursuant to this subdivision for an individual  
10 jurisdiction to eliminate years in which the calculated generation  
11 amount is shown not to be representative or accurate, based upon  
12 a generation study completed in one of the five years 2003 to 2007,  
13 inclusive. In these cases, the ~~board~~ *department* shall not allow the  
14 use of an additional year other than 2003, 2004, 2005, 2006, or  
15 2007.

16 (6) The ~~board~~ *department* may modify the method of calculating  
17 the equivalent per capita disposal rate for an individual jurisdiction  
18 to accommodate the incorporation of a new city, the formation of  
19 a new regional agency, or changes in membership of an existing  
20 regional agency. These modifications shall ensure that a new entity  
21 has a new equivalent per capita disposal rate and that the existing  
22 per capita disposal rate of an existing entity is adjusted to take into  
23 account the disposal amounts lost by the creation of the new entity.

24 (7) The ~~board~~ *department* shall not incorporate generation  
25 studies or new base year calculations for a year commencing after  
26 2006 into the equivalent per capita disposal rate, unless a  
27 generation study that included the year 2007 was commenced on  
28 or before June 30, 2008.

29 (8) If the ~~board~~ *department* determines that the equivalent per  
30 capita disposal rate cannot accurately be determined for a  
31 jurisdiction, or that the rate is no longer representative of a  
32 jurisdiction's waste stream, the ~~board~~ *department* shall evaluate  
33 trends in the jurisdiction's per capita disposal to establish a revised  
34 equivalent per capita disposal rate for that jurisdiction.

35 ~~SEC. 10.~~

36 *SEC. 11.* Section 41781 of the Public Resources Code is  
37 amended to read:

38 41781. (a) Except as provided in Sections 41781.1, and  
39 41781.2, for the purpose of determining the base rate of solid waste

1 from which diversion requirements shall be calculated, “solid  
2 waste” includes only the following:

3 (1) The amount of solid waste generated within a local agency’s  
4 jurisdiction, the types and quantities of which were disposed of at  
5 a permitted disposal facility as of January 1, 1990. Nothing in this  
6 section requires local agencies to perform waste characterization  
7 in addition to the waste characterization requirements established  
8 under Sections 41030, 41031, 41330, 41331, and 41332.

9 (2) The amount of solid waste diverted from a disposal facility,  
10 transformation facility, or EMSW facility, through source  
11 reduction, recycling, or composting.

12 (b) For the purposes of this section, “solid waste” does not  
13 include any of the following:

14 (1) Solid waste that would not normally be disposed of at a  
15 disposal facility.

16 (2) Used *tires* or waste tires, as defined in Article 1  
17 (commencing with Section 42800) of Chapter 16 of Part 3, or  
18 biomass material, as described in subdivision (a) of Section 40106,  
19 which are converted at an EMSW conversion facility.

20 (c) For the purposes of this chapter, the amount of solid waste  
21 from which the required reductions are measured shall be the  
22 amount of solid waste existing on January 1, 1990, with future  
23 adjustments for increases or decreases in the quantity of waste  
24 caused only by changes in population or changes in the number  
25 or size of governmental, industrial, or commercial operations in  
26 the jurisdiction.

27 ~~SEC. 11.~~

28 *SEC. 12.* Section 50001 of the Public Resources Code is  
29 amended to read:

30 50001. (a) Except as provided by subdivision (b), after a  
31 countywide or regional agency integrated waste management plan  
32 has been approved by the Department of Resources Recycling and  
33 Recovery pursuant to Division 30 (commencing with Section  
34 40000), a person shall not establish or expand a solid waste facility,  
35 as defined in Section 40194, in the county unless the solid waste  
36 facility meets one of the following criteria:

37 (1) The solid waste facility is a disposal facility, a transformation  
38 facility, or an EMSW conversion facility, the location of which is  
39 identified in the countywide siting element or amendment to that  
40 element, which has been approved pursuant to Section 41721.

1 (2) The solid waste facility is a facility that is designed to  
2 recover for reuse or recycling at least 5 percent of the total volume  
3 of material received by the facility, and that is identified in the  
4 nondisposal facility element that has been approved pursuant to  
5 Section 41800 or is included in an update to that element.

6 (b) Solid waste facilities other than those specified in paragraphs  
7 (1) and (2) of subdivision (a) shall not be required to comply with  
8 the requirements of this section.

9 (c) The person or agency proposing to establish a solid waste  
10 facility shall prepare and submit a site identification and description  
11 of the proposed facility to the task force established pursuant to  
12 Section 40950. Within 90 days after the site identification and  
13 description is submitted to the task force, the task force shall meet  
14 and comment on the proposed solid waste facility in writing. These  
15 comments shall include, but are not limited to, the relationship  
16 between the proposed solid waste facility and the implementation  
17 schedule requirements of Section 41780 and the regional impact  
18 of the facility. The task force shall transmit these comments to the  
19 person or public agency proposing establishment of the solid waste  
20 facility, to the county, and to all cities within the county. The  
21 comments shall become part of the official record of the proposed  
22 solid waste facility.

23 (d) The review and comment by the local task force shall not  
24 be required for an update to a nondisposal facility element.

25 ~~SEC. 12.~~

26 *SEC. 13.* No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 a local agency or school district has the authority to levy service  
29 charges, fees, or assessments sufficient to pay for the program or  
30 level of service mandated by this act, within the meaning of Section  
31 17556 of the Government Code.